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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 5453

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Salvatore Trovato

GENERAL COUNSEL'S REPORT # 13

SENSITIVE

I. ACTIONS RECOMMENDED:

(1) Find probable cause to believe Salvatore Trovato violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) by making an excessive contribution to the Giordano for U.S. Senate Committee in the amount of \$298,000;

(2) Approve the attached conciliation agreement

II. BACKGROUND

On July 14, 2000, Salvatore Trovato ("Respondent") gifted \$300,000 to his son-in-law, Philip Giordano, to use as direct cash collateral for a loan to the Giordano for U.S. Senate Committee ("the Committee"). Based on documents subpoenaed from the Respondent and pertinent bank information, and as detailed in the General Counsel's Brief, incorporated herein by reference, this "gift" constituted an excessive contribution to the Committee in the amount of \$298,000 in violation of 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) of the Federal Election Campaign Act of 1971, as amended ("the Act").

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8 **III. ANALYSIS**

9 Respondent's reply to the General Counsel's Brief ("Trovato Brief") does not refute any
10 of the factual statements made in the General Counsel's Brief. Instead, Respondent argues that
11 (a) the Commission should apply a more limited application of 2 U.S.C. § 441a to sharing of
12 funds among family members, and (b) that the gifts at issue were not made with "campaign
13 intent." See Trovato Brief dated September 23, 2005.¹

14 **A. The Act's contribution limitations apply to the candidate's family members.**

15 It is well established that the legality of a family contribution turns on the same legal
16 standard as all other contributions. In *Buckley v. Valeo*, 424 U.S. 1, 51 n.52 (1976), the Supreme
17 Court upheld application of the Act's contribution limits to members of candidates' family,
18 reiterating the legislative history of the Act which provided, "[I]t is the intent of the conferees
19 that members of the immediate family of any candidate shall be subject to the contribution
20 limitations established by this legislation The immediate family member would be

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act, herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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1 permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for
2 each election involved. S. Conf. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin.
3 News 1974, p. 5627.”²

4 Respondent argues that the Act's limitations on contributions cannot be applied to all
5 transfers of resources among family members, but only on those transfers where the family
6 member's intent is that the amounts be used for the candidate's campaign. See Trovato Brief at
7 p. 2. The facts in this matter, however, demonstrate that the Respondent intended the
8 contribution to be used for Mr. Giordano's Senate campaign. As discussed more fully in the
9 General Counsel's Brief, the Commission has looked at the following factors in assessing the
10 donor's intent to influence a federal election when transfers of funds from parents to a candidate
11 are involved: the timing of the funds transfer; whether there is an established custom of gift
12 giving from the parent(s) to candidate; whether the amounts and nature of the previous gifts were
13 comparable to the gift at issue; whether the candidate had ample funds and/or resources of his/her
14 own; whether the parent(s) made similar gifts to the candidate's siblings; the motivation for the
15 gift; and the general circumstances surrounding gift. See General Counsel's Brief at pp. 4-6,
16 citing 11 C.F.R. § 110.10(b)(2); AO 1981-15; AO 1988-7; AO 1982-64; AO 1978-40;
17 AO 1976-70; MUR 5138 (Ferguson for Congress); MUR 5321 (Janet Robert for Congress); and
18 MUR 3968 (Missourians for Carroll).

19 As discussed *infra* and in the General Counsel's Brief, there is ample objective evidence
20 uncovered during the investigation to establish that Respondent intended to make a contribution
21 to his son-in-law's federal campaign.

² The contribution limitations referenced in *Buckley* are at the same levels as those in the Act at 2 U.S.C §§ 441a(a)(1)(A) and (a)(3).

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B. Respondent's actions demonstrate intent to make a contribution to the Committee.

Respondent claims that in transferring the certificate of deposit to Mr. and Mrs. Giordano, he intended to assist with the family finances. *See* Trovato Brief at p. 2. Not only has he failed to provide any objective evidence supporting his claim, but the facts indicate otherwise. Indeed, as is more fully set forth in the General Counsel's Brief, the evidence reveals that Respondent initially attempted to co-guarantee a loan made directly to the Committee in the amount of \$300,000. *See* General Counsel's Brief at pp. 1-4. However, after the Reports Analysis Division notified the Committee that doing so would result in an excessive contribution from Respondent, he subsequently gifted \$300,000 to his son-in-law and daughter, which was placed in a certificate of deposit and simultaneously pledged as direct collateral for the loan to the Committee. *Id.* According to the bank documentation, the loan to the Committee was eventually repaid with the proceeds of the certificate of deposit. Affidavit of Philip W. Wolford, Chief Operating Officer of Patriot National Bank, sworn to August 20, 2004, at ¶¶ 33 and 34.

Furthermore, there is no demonstrated pattern of previous gift giving in amounts similar to the gift at issue here on behalf of Respondent to Mr. Giordano, or any of the Respondent's other children. *See* General Counsel's Brief at p. 3. Respondent's counsel's letter dated April 20, 2005 clearly states, "This letter confirms that Salvatore Trovato has given no single gift of over \$100,000 to Philip and/or Dawn Giordano or any of Mr. Trovato's other children. The only caveat to this statement is the \$300,000 certificate of deposit made by Mr. Trovato on behalf of Philip and Dawn Giordano on July 14, 2000."

The fact that the funds were placed in a certificate of deposit held in the names of Mr. and Mrs. Giordano does not establish that the funds were intended as a gift to both Mr. Giordano and

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1 his spouse. *See* 2 U.S.C. § 441f. Rather, the timing of the gift, the lack of a demonstrated pattern
2 of previous gift giving, and the circumstances surrounding the gift are all objective evidence that
3 the transfer of funds was intended to influence a federal election. *See* General Counsel's Brief at
4 pp. 3-6, and footnote 6.

5 Based upon the foregoing and the reasons set forth in the General Counsel's Brief, we
6 recommend that the Commission find probable cause to believe that Salvatore Trovato violated
7 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) by making an excessive contribution to the Committee.

8 IV.

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V. RECOMMENDATIONS

1. Find probable cause to believe that Salvatore Trovato violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).
2. Approve the attached conciliation agreement.
- 3.
4. Approve the appropriate letters.

10/12/05
Date

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Attachment

1. Proposed Conciliation Agreement